

FIRST REGULAR SESSION

# HOUSE BILL NO. 381

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HOPPE AND HOSMER (Co-sponsors).

Read 1<sup>st</sup> time January 16, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1128L.011

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### AN ACT

To amend chapter 149, RSMo, by adding thereto six new sections relating to the sale of cigarettes, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 149, RSMo, is amended by adding thereto six new sections, to be  
2 known as sections 149.200, 149.203, 149.206, 149.209, 149.212 and 149.215, to read as follows:

**149.200. 1. It is unlawful for any person to:**

2       **(1) Sell or distribute in this state; to acquire, hold, own, possess or transport for**  
3 **sale or distribution in this state; or to import, or cause to be imported into this state for sale**  
4 **or distribution in this state, any cigarettes that do not comply with all requirements**  
5 **imposed by or pursuant to federal law and implementing regulations, including but not**  
6 **limited to the filing of ingredients lists pursuant to section 7 of the Federal Cigarette**  
7 **Labeling and Advertising Act (15 U.S.C. 1335a); the permanent imprinting on the primary**  
8 **packaging of the precise package warning labels in the precise format specified in section**  
9 **4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333); the rotation of**  
10 **label statements pursuant to section 4(c) of the Federal Cigarette Labeling and Advertising**  
11 **Act (15 U.S.C. 1335(c)); restrictions on the importation, transfer and sale of previously**  
12 **exported tobacco products pursuant to Section 9302 of Public Law 105-33, the Balanced**  
13 **Budget Act of 1997, as amended; requirements of Title IV of Public Law 106-476, the**  
14 **Imported Cigarette Compliance Act of 2000, and federal trademark and copyright laws;**  
15 **or**

16       **(2) Alter the package of any cigarettes, prior to sale or distribution to the ultimate**  
17 **consumer, so as to remove, conceal or obscure:**

18       **(a) Any statement, label, stamp, sticker or notice indicating that the manufacturer**

19 did not intend the cigarettes to be sold, distributed or used in the United States, including  
20 but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside  
21 U.S.", or similar wording; or

22 (b) Any health warning that is not the precise warning statement in the precise  
23 format specified in section 4 of the Federal Cigarette Labeling and Advertising Act (15  
24 U.S.C. 1333).

25 2. It shall be unlawful for any person to affix any tax stamp or meter impression  
26 required to this chapter to the package of any cigarettes that does not comply with the  
27 requirements of subdivision (1) of subsection 1 of this section or that is altered in violation  
28 of subdivision (2) of subsection 1 of this section.

29 3. This section shall not apply to cigarettes allowed to be imported or brought into  
30 the United States for personal use, or to cigarettes sold or intended to be sold as duty-free  
31 merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C.  
32 1555(b) and any implementing regulations; provided, however, that this act shall apply to  
33 any such cigarettes that are brought back into the customs territory for resale within the  
34 customs territory.

35 4. Any person who violates this section, whether acting knowingly or recklessly, is  
36 guilty of a class D felony.

37 5. As used in this section, "package" means a pack, box, carton or container of any  
38 kind in which cigarettes are offered for sale, sold or otherwise distributed to consumers.

149.203. 1. The director may revoke or suspend the license or licenses of any  
2 wholesaler pursuant to the procedures set forth in section 149.035 upon finding a violation  
3 of section 149.200, or any implementing rule promulgated by the director pursuant to this  
4 chapter. In addition, the director may impose on any person a civil penalty in an amount  
5 not to exceed the greater of five hundred percent of the retail value of the cigarettes  
6 involved or five thousand dollars, upon finding a violation by such person of sections  
7 149.200 to 149.215, or any implementing rule promulgated by the director pursuant to this  
8 chapter.

9 2. Cigarettes that are acquired, held, owned, possessed, transported in, imported  
10 into, or sold or distributed in this state in violation of sections 149.200 to 149.215 shall be  
11 deemed contraband pursuant to section 149.055 and are subject to seizure and forfeiture  
12 as provided therein. Any cigarettes shall be deemed contraband whether the violation of  
13 sections 149.200 to 149.215 is knowing or otherwise.

149.206. A violation of sections 149.200 to 149.215 shall constitute an unlawful  
2 trade practice as provided in section 407.020, RSMo, and in addition to any remedies or  
3 penalties set forth in sections 149.200 to 149.215, shall be subject to any remedies or

4 penalties available for a violation of that section.

2       **149.209.** For purposes of this chapter, cigarettes imported or reimported into the  
3 United States for sale or distribution under any trade name, trade dress, or trademark that  
4 is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used  
5 for cigarettes manufactured in the United States for sale or distribution in the United  
States shall be presumed to have been purchased outside of the ordinary channels of trade.

2       **149.212.** Sections 149.200 to 149.215 shall be enforced by the director provided, that  
3 at the request of the director or the director's duly authorized agent, the state highway  
4 patrol and all local police authorities shall enforce the provisions of sections 149.200 to  
5 149.215. The attorney general has concurrent power with the prosecuting attorneys of the  
states to enforce the provisions of sections 149.200 to 149.215.

2       **149.215.** If any provision of sections 149.200 to 149.212 is held invalid, the  
remainder of such sections shall not be affected.